Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 80-496

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JAMES C. BURNS; C. H. CARTER; LOUIS J. GIDDENS; DELBERT R. GRANDE; DAVID C. MILLIGAN; THOMAS M. POTTER; JAMES A. RIDDLE; W. R. TODD; JOSEPH O. TURNER, II; KENNETH E. MAGENHEIMER, JACK CLINE; and ROLAND L. LANCASTER,
Plaintiffs-Appellants,

versus

GULF OIL CORPORATION, a foreign corporation,
Defendant-Appellee.

On Writ of Certiorari to
The United States Court of Appeals
For the Fifth Circuit

SUPPLEMENTAL BRIEF

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GULF OIL CORPORATION,
a foreign corporation,
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SUPPLEMENTAL BRIEF

COMES NOW the Plaintiffs-Appellants, by and through their undersigned counsel, and file this their

Supplemental Brief pursuant to Rule 22.6 of the Rules of the Supreme Court of the United States, adopted April 14, 1980, effective June 30, 1980, and wishes to call the Court's attention to the following Florida decisions, two of which are recently decided, and one of which was otherwise unavailable or overlooked at the time of the filing of the Petition herein. The recent Florida decisions are: Margolin v. Plant Hospital Association, Inc., 348 So.2d 57 (Fla. 2d DCA). This case stands for the proposition that a claim exists for violation or deviation from a corporation or company's by-laws relating to disciplinary proceedings of its own employees as this decision has a direct bearing upon one of the issues raised in the instant Petition. Another recent decision directly in point upon one of the key issues raised in this case, to-wit: violation of Gulf's disciplinary rules and policy, involves an award of damages as a consequence of a hospital's failure to comply with its own by-laws pertaining to disciplinary hearings for its staff members, Dam v. Heart of Florida Hospital, Inc., Cir.Ct., Polk County, Number GCG-79-1533. Defendant in this case, we are informed by Plaintiff's counsel, filed a Notice of Appeal and later abandoned same. Attached hereto is a reproduction of the Complaint and Final Judgment.

Plaintiffs-Appellants would also call the Court's attention to the case of Drennen v. Westinghouse Electric Corporation, 328 So.2d 52 (Fla. 1st DCA), in which that Court held actionable, under the theory of slander,

the employer's publication to several other employees that Plaintiff had been discharged for taking company property and that the defense of truth and good motives are matters normally to be resolved by a jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing have been furnished by United States Mail this ____ day of December, 1980 to Benjamin H. Hill, III, Esquire, and Charles P. Schropp, Esquire, of Shackleford, Farrior, Stallings & Evans, P.A., Post Office Box 3324, Tampa, Florida 33601, Attorneys for Respondent-Appellee.

I further certify that all parties required to be served have been served.

BRITTAIN WHITAKER

APPENDIX

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

MICHAEL E. DAM, JR., M.D.,
Plaintiff,
Case No.
versus GCG-79-1533

HEART OF FLORIDA HOSPITAL
ASSOCIATION, INC.,
a non-profit Florida corporation,
Defendant.

AMENDED COMPLAINT

COMES NOW the Plaintiff, MICHAEL E. DAM, JR., M.D., hereinafter called DR. DAM, and sues the Defendant, HEART OF FLORIDA HOSPITAL ASSOCIATION, INC., a non-profit Florida corporation, and alleges:

1. This is an action for damages in excess of One Hundred Thousand ($100,000.00) Dollars.

2. DR. DAM is a medical doctor who at all times material to this cause of action practiced medicine in Haines City, Florida and was a member in good standing of the staff of the Defendant Hospital and enjoyed

all privileges attendant to that status as a member of the Defendant Hospital.

3. The Defendant Hospital is a non-profit corporation organized to do business under the laws of the State of Florida whose principal place of business is Haines City, Florida. Its resident agent is David E. Kribs, 368 Peninsula Court, Haines City, Florida.

4. On July 28, 1977, and at all times material to this cause of action, the following people were agents of the Defendant Hospital, in the following capacity:

(a) Dale F. Syfert, member of the staff, member of the Clinical Review Committee, member of the Executive Committee.

(b) Dr. Robert E. Lee, President, Medical Staff, Chairman, Executive Committee.

(c) Dr. Edward F. Jukes, member of the staff, Chairman of the Clinical Review Committee.

(d) Dr. Frank J. Thornton, member of the staff, member of the Executive Committee.

5. On June 28, 1977, the Defendant Hospital, acting through its Clinical Review Committee, met and reviewed charts #20184 and #20184NB, which were records of two patients who had been admitted to the

Defendant Hospital under DR. DAM's care. This committee consisted of Dr. Donald A. Brungard, Dr. Dale F. Syfert, Dr. DiLorenzo, and Mr. David Kribs, Hospital Administrator was in attendance.

6. Chart #20184 reflected the records of an obstetrical patient admitted by DR. DAM, hereinafter called Mother, and Chart #20184NB, reflected the records of her male infant, hereinafter referred to as Baby.

7. On July 28, 1977, the Clinical Review Committee met and reviewed these two charts at the suggestion of Dr. Dale F. Syfert that there had been "possible mismanagement" of these patients by DR. DAM. Based on the information contained in the charts, and information provided by Dr. Dale F. Syfert to the Committee, a formal recommendation was made that DR. DAM's future treatment of newborn infants be monitored by another staff physician for a period of one year. Further, at the end of the one year period, a necessity or appropriateness of such observation would be reviewed by the Clinical Review Committee and the Executive Committee. It was understood by members of the Committee at that time that such a restriction would be a mandatory prerequisite to DR. DAM's admission or treatment of any newborn child and by practical effect, would be a mandatory prerequisite to the admission of any obstetrical patient whose child he intended to care for after its delivery.

8. This action was reduced to written form in the official minutes of the Clinical Review Committee meeting of June 28, 1977, by Mr. David Kribs.

9. The minutes reflected that the Clinical Review Committee had made a unanimous decision that such a recommendation was necessary under the circumstances and that the matter was being forwarded to the Executive Committee for its approval and/or implementation of the privilege restriction described above.

10. On July 1, 1977, the Executive Committee met for the purpose of reviewing the charts of the Mother and Baby and the recommendation of the Clinical Review Committee that DR. DAM be restricted in the manner described above.

11. At that time, Dr. Dale F. Syfert presented the charts referred to above, and based on the information contained in the minutes of the Clinical Review Committee meeting of June 28, 1977, the charts of the Mother and the Baby, and the information provided by Dr. Syfert, the Committee voted to implement the restriction described above and to so inform DR. DAM by letter.

12. Mr. David A. Kribs, drafted a letter, dated July 8, 1977, which was signed by Dr. Robert E. Lee, and mailed to DR. DAM. A copy of this letter is attached as Plaintiff's Exhibit A.

13. In this letter, the Defendant Hospital informed the Plaintiff that his treatment of Newborn Infant #20184NB was not in keeping with good medical practice. Further, it informed him that it was the decision of the Executive Committee that for a period of one year, a physician or physicians will be assigned to observe the care which DR. DAM would render to all infants in the newborn nursery. It further informed DR. DAM at the end of a one year period of time the appropriateness and/or necessity of this observation will be reviewed by the Clinical Committee and the Executive Committee.

14. The letter notifying DR. DAM of the reduction of his admitting privileges, except as performed in compliance with the restriction above, further informed him that he could appeal this action through the appeals mechanism found in the hospital by-laws. Accompanying the letter was a document called Addendum to the By-laws and Rules and Regulations of the Medical Staff, date of adoption, 4/15/75, attached as Plaintiff's Exhibit B.

15. On July 12, 1977, DR. DAM received the letter described above containing the selected portions of the by-laws described above. On or before July 18, 1977, DR. DAM complied with the procedures described in subsection A(c)(2), of the attached by-laws.

16. On or about July 14, DR. DAM made an oral request for a hearing to review the above described action of the Executive Committee to Dr. Robert E. Lee.

17. DR. DAM made a second request for a hearing by sending Dr. Robert E. Lee a written request on or before July 18, 1977, which request was received by Dr. Lee's agent, Cindy Lee on or about July 19, 1977.

18. The Defendant Hospital failed to respond either officially or unofficially to Dr. Dam's request for a hearing. As a result therefore, he was injured in the manner specifically described in Counts I through V of this Complaint.

COUNT I

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

19. The Plaintiff readopts the allegations contained in Paragraphs one through eighteen above, and further alleges:

20. That the Defendant Hospital, acting through its agents, intentionally and maliciously, and/or recklessly acted to cause severe emotional distress to the Plaintiff by falsely accusing him of treatment of a newborn child which was not in keeping with good medical practice and by refusing to allow him the opportunity to defend himself against this accusation and by enacting a restriction upon his admitting privileges which they knew or should have known would result in the elimination of a substantial part of his medical practice in Haines City, Florida. This severe infliction of emo-

tional distress was accomplished in the following specific manner:

21. Before the Clinical Review Committee meeting of June 28, 1977, it came to the attention of the Chief of Staff, Dr. Robert E. Lee, that Dr. Dale F. Syfert was reviewing DR. DAM's charts, and conducted what amounted to a personal and private monitoring of DR. DAM's patient care. A review of a fellow physician's charts when not conducted as part of an official function is known to be an unethical and improper procedure in the medical community. Dr. Lee spoke to Dr. Syfert about this violation, and asked that it not be repeated in the future.

22. On June 28, 1977, at the meeting of the Clinical Review Committee, Dr. Dale F. Syfert brought the charts of the Mother and Baby to the attention of the Committee. After the presentation of the charts by Dr. Syfert, for possible mismanagement, there were suggestions made by other members of the Committee, including but not limited to Dr. Donald Brungard, that DR. DAM be allowed an opportunity to explain his care of the Mother and Baby. Despite that suggestion by Dr. Brungard, no such opportunity was afforded DR. DAM prior to the vote to recommend the above-described restriction to the Executive Committee.

23. The minutes of the June 28, 1977, Clinical Review committee were compiled by Mr. David A. Kribs and falsely and incorrectly reflected that the privilege

restriction described above was the result of a unanimous decision by the Clinical Review Committee to recommend such restriction on DR. DAM's privileges. Further, they omitted any reference to the objections made by the members of the Committee to the procedure by which the recommendation was adopted, as no opportunity was afforded DR. DAM to defend his medical treatment before such a recommendation was made.

24. Because the specific written minutes described above were presented to the Executive Committee on July 1, and in part form the basis upon which the Executive Committee voted to implement the restriction recommended by the Clinical Review Committee, the omission of this information constituted an act done with the intent to injure DR. DAM, or in the alternative done in reckless disregard of the truth and in reckless disregard of DR. DAM's rights.

25. Before the Executive Committee met on July 1, 1977, Dr. Robert E. Lee was approached personally by Dr. Brungard and informed that Dr. Brungard felt that the proceedings in the Clinical Review Committee meeting of July 27, were "unjust" and that he felt DR. DAM should have had an opportunity to defend his treatment of the Mother and Baby before such a recommendation as that described above should be made.

26. On July 27, 1977, the Executive Committee convened for the purpose of reviewing the above de-

scribed recommendation of the Clinical Review Committee. Present at that meeting were, among others, Dr. Robert E. Lee, Dr. Dale F. Syfert, Dr. Frank J. Thornton, and Mr. David Kribs. At that time and place, the Committee acted with malice, or in reckless disregard of DR. DAM's rights, with the intent to cause him severe emotional distress, by implementing the restriction described above, despite actual knowledge of the following factors:

(a) David Kribs who had been in attendance at the Clinical Review Committee meeting of July 27, 1977, knew that the Committee had not been unanimous in its decision to recommend the actual implementation of the restriction described above, but failed to so inform the Committee or recommend that DR. DAM be allowed to defend his treatment before the implementation of the restriction.

(b) Dr. Dale F. Syfert, who was the person primarily responsible for making the accusation of mismanagement against DR. DAM, knew of the dissatisfaction expressed by members of the Clinical Review Committee meeting at which the recommendation was made, but failed to recommend that DR. DAM be given a chance to defend his treatment of the patients concerned.

(c) Dr. Robert E. Lee knew, personally, of Dr. Brungard's concern with the manner in which the Clinical Review Committee's review had occurred and Dr.

Brungard's desire that further investigation should be conducted before any formal restriction upon DR. DAM's privileges was imposed.

(d) Dr. Robert E. Lee, Dr. Dale F. Syfert, Mr. David E. Kribs and Dr. Frank J. Thornton, each knew or should have known that formally accusing DR. DAM of medical treatment "not in keeping with good medical practice" would cause him severe emotional distress.

(e) Further, each person previously named, knew or should have known that upon the imposition of such a restriction, DR. DAM would discontinue, as soon as practicable, the admission of obstetrical/new born patients to the Heart of Florida Hospital rather than submit to a monitoring of his patient's care by another physician, which practice could, if known to the patient cause the patient to question DR. DAM's professional competence.

(f) Further, Dr. Lee knew that Dr. Syfert had conducted an unauthorized review of DR. DAM's charts before the matter of the care of #20184 and #20184NB came under review by the Clinical Review Committee.

27. Despite this knowledge, Dr. Robert E. Lee acting on the basis of the formal decision of the Executive Committee, and as Chief of Staff and agent of the Defendant Hospital, with the intent to cause severe

emotional distress to the Plaintiff, or in the alternative with reckless disregard for the fact that such severe emotional distress would occur, wrote the Plaintiff the letter attached as Exhibit A and informed him of the formal implementation of the restriction described above.

28. Following DR. DAM's receipt of Exhibit A, on July 12, 1977, Dr. Lee was again approached by Dr. Brungard, who expressed concern that DR. DAM had been formally censured without having had the opportunity to defend himself. Dr. Lee was informed that DR. DAM was emotionally distressed and upset at the decision and that DR. DAM wanted an opportunity to defend the medical treatment upon which the censure was based.

29. Further, on or about July 14, 1977, DR. DAM personally requested that Dr. Lee give him a hearing in which the decision of the Executive Committee could be reviewed or questioned.

30. On or about July 18, 1977, DR. DAM made a formal request, by letter, to Dr. Lee, in compliance with the by-laws of the Defendant Hospital in which a hearing was again requested.

31. At that time, Dr. Lee knew or should have known that DR. DAM believed, upon receipt of the letter marked Plaintiff's Exhibit A, that he was accused of "medical treatment not in keeping with the stand-

ards of medical care at the Heart of Florida Hospital" and this allegation caused DR. DAM severe emotional and mental distress.

32. Further, Dr. Lee knew or should have known, that DR. DAM believed that the medical treatment rendered his future newborn patients would be monitored by another physician on staff and that such a practice would cause great emotional and mental distress to DR. DAM.

33. Further, Dr. Lee knew or should have known that DR. DAM would discontinue, as soon as practicable, the admission of obstetrical patients to the Heart of Florida Hospital rather than submit to the monitoring practice described above, which if known to the patient could cause the patient to question DR. DAM's professional competence.

34. Further, Dr. Lee was advised by the Hospital Attorney, Andrew Reilly, that DR. DAM should be given a hearing and an opportunity to defend his treatment.

35. David A. Kribs was also aware of the advice by the Hospital Attorney that DR. DAM should be given a hearing and an opportunity to defend his treatment.

36. Further, all members of the Executive Committee including Dr. Frank J. Thornton and Dr. Dale F.

Syfert, were advised of the Hospital Attorney's recommendation that DR. DAM be given a hearing and an opportunity to defend his treatment.

37. David A. Kribs, Robert E. Lee, Frank J. Thornton and Dale F. Syfert, all knew or should have known that DR. DAM believed himself to be restricted from the admission of newborn patients unless he would submit to the monitoring of the care of such patients by another staff physician. All of these people knew or should have known that DR. DAM felt himself to be falsely accused of employing medical treatment "not in keeping with good medical practice" and that he wished the opportunity to defend himself and clear his record of this accusation. Further, all of these people knew or should have known that DR. DAM would cease to admit obstetrical patients, as soon as practical, rather than submit to the monitoring practice described above.

38. Despite the knowledge of the extreme mental distress suffered by DR. DAM and the probable effects upon his practice of the restriction described above, the Defendant Hospital acting through its agent, refused to honor DR. DAM's request for a hearing, and they did so with the knowledge that the refusal to allow DR. DAM to defend his treatment of the newborn baby would cause severe emotional distress to DR. DAM and affect his medical practice at the Defendant Hospital in the manner described above.

39. Further, the letter attached as Plaintiff's Exhibit A was made a permanent part of DR. DAM's personnel file at the Defendant Hospital and is contained in his file at the present time. The Defendant Hospital knew or should have known that the placement of this letter in DR. DAM's file, which was done with the intent to cause him severe mental distress, or in the alternative, in reckless disregard of the fact that it would cause him severe mental distress, would so affect the Plaintiff.

40. As a result of the above-described acts or omissions DR. DAM was damaged in his professional reputation, suffered humiliation and embarrassment, and suffered severe mental anguish and severe mental distress. Further, DR. DAM discontinued undertaking the care of obstetrical patients, as he believed he would not be allowed to care for their newborn infants following delivery at the Heart of Florida Hospital without being monitored by a staff physician. In light of the procedure described above and his inability to defend his treatment which resulted in the restriction described above, he feared that future incidences or censures would occur as a result of the monitoring practices described above. Further, he feared that his obstetrical patients would learn that his care of their newborn children would be under observation because of his "mismanagement of a newborn child" and that such knowledge, if known by the patient, could cause the patient to lose confidence in DR. DAM as a physician.

Therefore, DR. DAM lost contracts with potential obstetrical patients and lost income from potential obstetrical patients as a result of the specific acts and omissions described above which were performed with the intent to accomplish such a loss to DR. DAM or in the alternative, were reasonably calculated to cause such a loss of patients to DR. DAM.

WHEREFORE, the Plaintiff requests trial by jury and demands compensatory and punitive damages in excess of One Hundred Thousand ($100,000.00) Dollars.

COUNT II

TORTIOUS INTERFERENCE WITH BUSINESS CONTRACTS

41. The Plaintiff realleges and adopts paragraphs one through forty and further alleges that:

42. The Defendant Hospital acting through its agent as described above intentionally interfered with DR. DAM's business relationship with future obstetrical patients and caused a loss of the potential contracts for treatment of these patients in the following specific manner:

43. The Defendant Hospital knew or should have known that the Plaintiff relied upon contracts with obstetrical patients to provide a part of his income as a medical practitioner.

44. The Defendant Hospital knew or should have known that DR. DAM did not have staff privileges at any other hospital facility in the area, and knew or should have known that any restriction on his right to admit obstetrical patients to the Defendant Hospital would cause a reduction in his income from that source.

45. The Defendant Hospital knew or should have known that a restriction placed on the manner in which a newborn child could be treated at the Defendant Hospital nursery, would in effect restrict the admission of obstetrical patients as it was the common medical practice in the Defendant Hospital's community for the doctor who delivered the obstetrical patient to care for the newborn child that resulted from that delivery.

46. The Defendant Hospital knew or should have known that the Plaintiff was aware that his charts were being reviewed on the hospital floor, contrary to the standard medical custom at the Defendant Hospital, and that he had been accused of mismanagement of a newborn child's care without being given the opportunity to defend himself at anytime despite the procedural safeguards embodied in the Hospital by-laws; that future admissions of newborn children would be monitored in a similar fashion in accordance with the Executive Committee's decision of July 1, 1977.

47. The Defendant Hospital knew or should have known that in light of those circumstances, the Plaintiff would be likely to discontinue the care of obstet-

rical patients rather than submit to the monitoring procedure which had severe effects on his professional status as well as his relationship with his obstetrical patients. Specifically, DR. DAM feared that his patients would lose confidence in his ability if they were to become aware that the Defendant Hospital had ordered his care of all newborn treatment to be supervised by another staff physician. Additionally, DR. DAM feared that a continued review procedure, to which he would not be able to respond should future accusations of mismanagement be made, could result in his elimination as a member of the Hospital staff.

48. The Plaintiff delivered only the obstetrical patients to whom he had been committed during their pregnancies, at the time he was informed of the Executive Committee's decision of July 1, 1977. He did not accept any new obstetrical patients from the time the decision was announced until the present date and has lost and will continue to lose profits from the potential contracts that he was forced to refuse.

49. Further, DR. DAM suffered mental anguish, severe mental distress, past and future loss of income as a result of the above described interference with his practice of his medical profession.

50. The above described acts were done intentionally, with the intent to injure DR. DAM as described above or in the alternative were done with reckless disregard of the injury that such acts would produce.

WHEREFORE, the Plaintiff requests a trial by jury and demands compensatory and punitive damages in excess of One Hundred Thousand ($100,000.00) Dollars.

COUNT III

51. The Plaintiff realleges paragraphs one through fifty and further alleges:

52. Dr. Dam was denied fundamental due process rights under Article I, Declaration of Rights, Section 9, Florida Constitution (1968), as the Defendant Hospital substantially departed from the provisions of its by-laws in reducing his admitting privileges. These due process departures from the by-laws of the Defendant Hospital include, but are not limited to, the following:

(a) the letter informing DR. DAM of his reduction of Staff privileges did not adequately advise DR. DAM of his right to a hearing before an ad hoc hearing committee of the medical staff as required by the by-laws.

(b) The letter informing DR. DAM of his reduction of staff privileges did not advise DR. DAM of his right to appellate review by the governing body of the Defendant Hospital if the recommendation of the Executive Committee following the ad hoc hearing was still adverse as required by the by-laws.

(c) The letter informing DR. DAM of his reduction of staff privileges did not specify that DR. DAM had seven days following the date of receipt of the letter within which to request a hearing or appellate review as required by the by-laws.

(d) The letter informing DR. DAM of his reduction of staff privileges did not state that if DR. DAM failed to request a hearing or an appellate review within seven days, he waived his right to such hearing or appellate review, as required by the by-laws.

(e) The letter informing DR. DAM of his reduction of staff privileges did not inform DR. DAM that once his request for hearing had been received, he would be notified of the date, time and place for the hearing or appellate review and the grounds upon which the adverse action of the Executive Committee was based, as required by the by-laws.

(f) The letter informing DR. DAM of his reduction of staff privileges did not advise DR. DAM of his right to review the hearing record and report of the Clinical Review Committee and the Executive Committee, and to submit a written statement in his behalf, as required by the by-laws.

(g) The letter informing DR. DAM of his reduction of staff privileges was not sent by the Administration of the hospital, as required by the by-laws.

(h) Even though DR. DAM requested a hearing on at least two occasions, he was not notified by the Executive Committee nor governing body of the Defendant Hospital, within three (3) days after receipt of his request for a hearing, of the time, place and date of such a hearing, by certified mail, return receipt requested, as required by the by-laws.

(i) Even though DR. DAM requested a hearing on at least two occasions, he has never been granted one, even though a hearing is required by the by-laws.

(j) DR. DAM has not been allowed to review and examine the original chart of newborn #20184NB, as required by the by-laws.

(k) DR. DAM has not been allowed to review the hearing record, the minutes and report of the Clinical Review Committee, as required by the by-laws.

(l) DR. DAM has not been informed of the specific omissions, commissions or deviations from good medical practice which formed the basis of the decision of the Clinical Review Committee to reduce his staff privileges as required by the by-laws.

(m) DR. DAM has not been allowed, by the Clinical Review Committee or the Executive Committee to appear with counsel, to testify or call witnesses, to introduce oral or written evidence, and to refute any

and all charges or accusations against him, as required by the by-laws.

(n) DR. DAM has not been informed by the Clinical Review Committee nor the Executive Committee, nor the governing body of the Defendant Hospital of a final decision concerning the reduction of his staff privileges as required by the by-laws.

53. Because of the restriction placed on his privileges and the action taken by the Defendant, DR. DAM has suffered damage to his professional reputation. He has not had an opportunity to refute the allegations made against him. He has not been informed if the restrictions on his privileges have been withdrawn following the passing of the one year period. The letter described above is in DR. DAM's personnel file at the hospital. This letter is subject to review by anyone inspecting his file. By its very terms, such a letter will have a continuing effect on DR. DAM's professional reputation, his ability to procure medical malpractice insurance, and his relationship with his patients.

WHEREFORE, the Plaintiff requests a final judgment to be entered by this Court perpetually requiring the Defendant, HEART OF FLORIDA HOSPITAL ASSOCIATION, INC., to:

(a) Reinstate DR. DAM's full medical privileges unless and until he is given hearing and the other due

process guaranties provided by the by-laws of the Defendant.

(b) Remove from his personnel file any reference to this entire incident until he is given a hearing and the other due process guaranties provided by the by-laws of the Defendant.

54. As a result of the above described due process departures from the by-laws and as a result of his restricted staff privileges, DR. DAM was damaged in his reputation, suffered humiliation and embarrassment, suffered mental distress, loss of contracts and earnings from his patients, loss of prospective contracts with new patients and lost income in the past and he will lose income in the future.

WHEREFORE, the Plaintiff requests trial by jury and demands punitive and compensatory damages in excess of One Hundred Thousand ($100,000.00) Dollars.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: JAMES A. MURMAN, ESQ., Post Office Box 1628, Tampa, Florida 33601; to ANDREW R. REILLY, ESQ., Post Office Box 2039, Haines City, Florida 33844; and to, G. BRUCE HILL, ESQ., 1200 Hartford Building, 200 East Robinson St., Orlando, Florida 32801, on this 4th day of September, 1979, by U.S. mail.

BLACKBURN, GIBSON & GULDEN
512 East Washington Street
Orlando, Florida 32801
305/425-0111
Attorneys for Plaintiff

/s/ ELIZABETH J. GULDEN
ELIZABETH J. GULDEN

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

MICHAEL E. DAM, JR., M.D.,
Plaintiff,
Case No.
versus GCG-79-1533

HEART OF FLORIDA HOSPITAL
ASSOCIATION, INC.,
Defendant.

FINAL JUDGMENT

Pursuant to the Verdict rendered in this action,

It is adjudged that the Plaintiff, MICHAEL E. DAM, JR., M.D., recover from the Defendant, HEART OF

FLORIDA HOSPITAL ASSOCIATION, INC., the sum of $65,000.00, together with costs in the sum of $2,577.83, for which let execution issue.

As to the portion of the action asking for equitable relief which was tried before the Court, on the evidence presented,

It is adjudged that the HEART OF FLORIDA HOSPITAL ASSOCIATION, INC., is required to:

(a) Reinstate Dr. Dam's prior medical privileges unless and until he is given a hearing and other due process guaranties provided by the laws of the Defendant.

(b) Remove from his personnel file any reference to this entire incident until he is given a hearing and the other due process guaranties provided by the by-laws of the Defendant.

ORDERED at Bartow, Florida, on this 7th day of July, 1980.

/s/ E. RANDOLPH BENTLEY
CIRCUIT JUDGE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Judgment has been furnished to MICHAEL TONELLI, ESQ./JAMES A. MURMAN,

ESQ., Post Office Box 2762, Tampa, Florida 33601; to ANDREW R. REILLY, ESQ., Post Office Box 2039, Haines City, Florida 33844; to G. BRUCE HILL, ESQ., 1200 Hartford Building, 200 East Robinson Street, Orlando, Florida 32801; and, to DONALD L. GIBSON, ESQ./ELIZABETH J. GULDEN, ESQ., 512 East Washington Street, Orlando, Florida 32801, on this ____day of June, 1980.

_____

SECRETARY TO THE JUDGE